

## OECA and Regional Report

Week Ending March 10, 2017

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## Office of Site Remediation Enforcement

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### New Superfund Attorney Training Scheduled for April 2017

Registration has opened for OSRE's New Superfund Attorney Training which will be held in Washington, DC during the week of April 24, 2017. This week-long course provides attorneys who are new to Superfund with a thorough understanding of the components of the Superfund program and the role of the Superfund attorney. The intended audience is all EPA Regional and Headquarters attorneys who are new to the program; attorneys from the Department of Justice, Department of the Interior, Coast Guard, Corps of Engineers and other federal agencies. State and tribal attorneys who work closely with Superfund are also welcome to attend. The course will be held in the WJC South building. Contact: Zena Aldridge, 202-564-3954.

##### OIG FA Update

In January 2016, the OIG submitted an information request to OSRE and OSRTI related to the CERLCA FA data. OSRE, in collaboration with OSRTI, submitted the responses and related data to the OIG on February 16, 2017.

The overall analysis was based on 596 enforcement instruments. A lot of effort was required to review and assess the data for these enforcement instruments in order to summarize and answer the OIG's questions. There was also a lot of effort from the Regions to review and update the data in SEMS, which greatly improved the FA data quality in SEMS. After OSRE's review and analysis of the data, we have confirmed that the original data pull to the OIG did not accurately reflect what the current FA data is. Notably:

- The number of enforcement instruments without FA provisions is 150, not 264.
- The number of enforcement instruments where FA is required, but not provided, is 52, not 357. This number will continue to decrease as the Regions are currently working to secure FA and/or review financial test/corporate guarantee (FT/CG) certifications for these sites.
- The risk presented with the number of enforcement instruments where FA is required, but not provided, is not \$7.684 billion. Rather, the risk is about 10% of this number, \$780 million, and will continue to decrease.

The OIG plans to issue a discussion paper on FA in March, 2017. Contact: Jacquie Huynh-Linenberg, 202-564-0547.

##### National Bankruptcy Workgroup Meeting Held in Atlanta

On February 16, 2017, the National Bankruptcy Workgroup conducted its annual workgroup meeting in Atlanta, Georgia, hosted by the EPA Region 4 office. The group consists of bankruptcy coordinators from EPA Headquarters (including the Office of Site Remediation

Enforcement’s bankruptcy team and our OGC representative), every EPA region, DOJ’s bankruptcy coordinators, and representatives from the Department of Interior. During the meeting, the workgroup discussed the past year’s environmental bankruptcy case law, as well as the bankruptcy-related issues and challenges that each bankruptcy coordinator faced in 2016. The workgroup also enjoyed a presentation by Jack Williams, Professor of Law at Georgia State University, who discussed an important bankruptcy case before the Supreme Court, 3<sup>rd</sup> party releases, “death trap” plans, the power of secured creditors, and more. As always, it was a productive and informative meeting. Contact: Bob Roberts, 202-564-4267.

#### **Superfund e-Discovery Training in Region 7, Kansas City**

On February 28, 2017, Deniz Ergener and Karissa Orris traveled to Region 7 to provide Superfund focused e-Discovery training. The training was well attended by both ORC and Program employees, with approximately 25-30 people in attendance. The training focused on the entire e-Discovery process ranging from information governance, through preservation and collection, and ending with the review process including applicable privileges. The region gave positive feedback, saying that the training clearly and thoroughly touched on exactly the elements that the organizer had hoped would be covered. Contact: Karissa Orris, 202-564-0546.

#### **OECA Participates in Tribal Waste and Response Assistance Program Meeting with EPA**

On February 21, 2017, OECA joined the Office of Land and Emergency Management (OLEM) at their meeting with the Tribal Waste and Response Assistance Program (TWRAP) Steering Committee. OECA discussed the different ways that EPA engages recognized Indian tribes on RCRA and CERCLA related issues, including conducting compliance monitoring activities, enforcement, and treaty rights. OECA also discussed EPA’s work on environmental justice and indigenous peoples’ issues. The event also provided an opportunity for the TWRAP Steering Committee to discuss other matters pertaining OECA’s work involving tribes. The TWRAP Steering Committee is an OLEM-sponsored tribal partnership group that represents Native American and Alaskan Native programs throughout the country. The Steering Committee is composed of up to ten tribal professionals working in waste, brownfields, underground storage tanks, CERCLA, and response programs. OLEM and the TWRAP Steering Committee meet four times a year. OECA was represented by Danny Gogal, OEJ’s tribal and indigenous peoples program manager, Anthony Austin, an OSRE tribal coordinator, and Jonathan Binder, OECA’s tribal program manager. Contact: Anthony Austin, 202-564-6943.

#### **District Court Dismisses Atlantic Richfield Company’s Lawsuit Barring Landowners from Proceeding with Restoration Damages at Anaconda Smelter Superfund Site [*Atlantic Richfield Company v. Gregory Christian, et al.*, CV 15-83-BU-BMM-JCL (D. Mont., Feb. 15, 2017)]**

On February 15, 2017, the United States District Court for the District of Montana (the Court), granted residential landowners motion for summary judgment dismissing Atlantic Richfield Company’s (ARCO) lawsuit against residential landowners in *Atlantic Richfield Company v. Gregory Christian, et al.*, CV 15-83-BU-BMM-JCL (D. Mont., Feb., 15, 2017). On December 22, 2015, Atlantic Richfield Company (ARCO) filed a lawsuit in federal court in Montana against residential land owners, living near the Anaconda Superfund Site (the Anaconda Site).

ARCO's lawsuit is in response to plaintiffs' state court lawsuit seeking restoration damages for their homes. ARCO's lawsuit alleged plaintiffs' requested relief is impermissible under CERCLA §113(h) and sought to enjoin them from proceeding with their requested restoration actions. Landowners filed a motion to in federal court to dismiss ARCO's complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b). The parties subsequently filed cross-motions for summary judgment under Federal Rule of Civil Procedure 56.

This issue is currently being litigated between ARCO and the same group of residential landowners in an ongoing case in Montana's State Supreme Court. EPA filed an amicus brief in the Montana State Supreme Court case asserting that some of the landowners' claims are barred by CERCLA section 113(h) until remediation of the Anaconda Site is completed.

The district court held it would not exercise jurisdiction over ARCO's claims and dismissed ARCO's case. In dismissing the case, the Court stated "further prosecution of this declaratory action could lead to an entanglement between the federal and state court systems. This Court and the state court potentially could reach disparate conclusions regarding whether CERCLA bars the landowners' claims for restoration damages. Second, further prosecution of this declaratory action will not settle all aspects of the underlying state court action. The declaratory relief sought by ARCO in this case relates only to the Landowners' claims for restoration damages. The Landowners have asserted damage claims in the state court action that would remain viable even if ARCO were to prevail in this action. The Court finds no compelling reason to exercise jurisdiction in this case." Contact: Clarence Featherson, 202-564-4234.

#### **U.S. Files Post-Trial Brief in Centredale Manor CERCLA Litigation**

On March 6, 2017, DOJ filed a brief on behalf of EPA in the U.S. district court for the District of Rhode Island, following the recent completion of the second phase of the trial involving the Centredale Manor Restoration Superfund Site in North Providence Rhode Island. The Court previously held (during the first phase of the trial) that Emhart Industries is liable for the response costs incurred by the United States for this Site. During this second phase of the trial, the U.S. asked the Court to determine that the cleanup remedy that EPA selected for this site is not arbitrary and capricious and was made in accordance with the statute and the National Contingency Plan. Similarly, the U.S. also asked the Court to determine that EPA's finding that the releases at the Site may present an imminent and substantial endangerment was not arbitrary and capricious and thus the cleanup order that EPA issued to Emhart Industries in 2014 was lawful. In addition, the U.S. asked that the Court hold that Emhart did not have sufficient cause not to comply with the order and should be liable for treble damages and substantial penalties. Finally, the U.S. also requested that the Court require Emhart to comply with EPA's order and to pay the U.S.' past costs (~\$32 million) and future costs. OSRE personnel provided input to Region 1 and DOJ on the drafting of this brief. Contact: Mike Northridge, 202-564-4263.

#### **Virginia Voluntary Cleanup Memorandum of Agreement Modification**

On March 1, 2017, Region III and the Virginia Department of Environmental Quality (VADEQ) modified their Voluntary Cleanup Program Memorandum of Agreement (MOA) that had been

effect since 2002. The MOA addresses VADEQ's use of its Voluntary Remediation Program at brownfield sites subject to cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The purpose of the MOA modification is to recognize VADEQ's use of its Remediation Consent Order program to enhance the enforceability of voluntary cleanups and to further the goals of the MOA. Pursuant to EPA Delegation 14-44, Region III consulted with OSRE and OLEM prior to modifying the MOA. Contact: Anthony Austin, 202-564-6943; Matt Sander, 202-564-7233.

#### **Vertellus Specialties, Inc., et al. Trust Agreement with EPA and Affected States**

On September 7, 2016, the United States Bankruptcy Court for the District of Delaware approved the motion of Vertellus Specialties, Inc. to sell substantially all of its assets. The bankruptcy court conditioned its approval of the asset sale on the debtor's promise to reach an agreement satisfying the objection of the EPA and affected states to the debtor's sale motion. On September 23, 2016, EPA and the states reached an agreement with Vertellus that resolved all objections to the asset sale. The terms of the agreement included establishing an environmental response trust totaling \$1 million to fund ongoing work for cleanup of certain Superfund and state sites, as well as the assignment of insurance claims to the environmental response trust, allowing for significant potential funding for additional site cleanup.

On February 22, 2017, Cyndy Mackey, Director of EPA's Office of Site Remediation Enforcement, signed the trust agreement anticipated in the September 23, 2016 agreement. The trust agreement, which governs the implementation of the environmental response trust, became effective on February 24, 2017 when the bankruptcy court confirmed the Vertellus Specialties, Inc. plan of liquidation. Contact: Bob Roberts, 202-564-4267.

#### **Court Enters Consent Decree with Northern States Power for Final Remedial Action at the Ashland/Northern States Power Superfund Site**

On March 1, 2017, the United States District Court for the Western District Court of Wisconsin entered a CERCLA Consent Decree between EPA and Northern States Power (NSP) that will complete the cleanup of the Ashland/Northern States Power Superfund Site (Site) in Ashland, Wisconsin. The Consent Decree provides that NSP, the former owner of a manufactured gas plant, will complete the cleanup of sixteen acres of contaminated sediments within Chequamegon Bay, which is part of Lake Superior. This final phase of the cleanup will address the contaminated sediments containing high levels of polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs) that are by-products of the historic manufactured gas operations. The cleanup of the sediments will occur in 2017 and is expected to cost \$42 million. In addition, NSP will reimburse \$1 million of EPA's past costs and pay future oversight costs for the sediment work. Prior to this action, NSP cleaned up contaminated soil and groundwater for the on-land portions of the Site. Contact: Doug Dixon, 202-564-4232; David Dowton, 202-564-4083.

## Region 1

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### **Region 1 Files Administrative Complaint Against 5 MF Holding, LLC for Failing to Comply with Lead Disclosure Rule in Coventry, RI [Docket No. TSCA-01-2017-0037]**

On March 3, 2017, Region 1 issued an Administrative Complaint alleging that 5 MF Holding, LLC (Respondent) failed to comply with lead-based paint disclosure requirements of TSCA Section 1018's "Disclosure Rule." The Disclosure Rule ensures that purchasers and renters of housing built before 1978 receive the information necessary to protect themselves and their families from lead-based paint hazards. Respondent owns two buildings containing a total of nine units of target housing. The Complaint alleges eight violations of the Disclosure Rule requirements at two residential units owned by Respondent. A child under the age of two was living in each unit at the time of the violations. Each of these children was reported to have elevated blood levels. The Complaint proposes a penalty of \$81,127. Many residences built before 1978 have lead-based paint which can be toxic to humans and animals. This enforcement action will promote the protection of public health. Contact: Sharon Hayes, 617-918-1328; Kathleen Woodward, 617-918-1780.

##### **Region 1 Settles CAA 112(r)/EPCRA Action Against RBF Frozen Desserts, LLC [Docket Nos. CAA-01-2016-0068 and EPCRA-01-2016-0069]**

Region 1 settled an administrative penalty action against RBF Frozen Desserts LLC (RBF) alleging violations of Section 112(r)(1) of the Clean Air Act (CAA) (specifically, violations of the General Duty Clause) and Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) at its West Hartford, Connecticut facility. RBF produced ice cream and frozen desserts using an ammonia refrigeration system containing anhydrous ammonia. Specifically, with respect to the General Duty Clause, RBF failed to: (1) identify hazards which may result from accidental releases of extremely hazardous substances; (2) design and maintain a safe facility, taking such steps as are necessary to prevent such releases; and (3) minimize the consequences of accidental releases, should they occur. RBF also violated Sections 311 and 312 of EPCRA and implementing regulations at 40 C.F.R. Part 370 by failing to timely submit material safety data sheets or chemical lists and a Tier 2 form to the proper authorities. The CAFO requires RBF to pay a civil penalty of \$5,000, which reflects RBF's limited ability to pay, to resolve liability for the CAA and EPCRA violations. RBF no longer operates the West Hartford facility or any other facility. **NEI – Hazardous Chemicals – Reducing Risks of Accidental Releases at Industrial and Chemical Facilities.** Contact: Jim Gaffey, 617-918-1753; Laura Berry, 617-918-1148.

##### **GE Agrees to Pay EPA's Cost Demand Under GE-Housatonic Consent Decree**

On March 8, 2017, the General Electric Company (GE) notified EPA that it agreed to pay in full EPA's demand for reimbursement of incurred costs during FY 2016. EPA had earlier demanded payment of \$1,381,360 for costs incurred from October 2015 to September 2016 under the

Consent Decree governing the cleanup of the Housatonic River and Pittsfield, Massachusetts. Pursuant to the ongoing Decree, EPA bills GE annually for reimbursement of EPA and DOJ costs incurred related to the implementation of the Decree; the Decree provides for GE to dispute or pay the bill within 60 days.

Background: At its Pittsfield facility, GE used PCBs from 1932-1977, contaminating land and water in Pittsfield and downstream. The PCBs present unacceptable human health and ecological risks. In October 2000, the United States, Connecticut, Massachusetts, and GE entered into a judicial Decree requiring GE to perform and pay for cleanups related to GE's contamination of the Housatonic River and over 20 specific areas of PCB contamination outside the River. As part of that Decree, GE is to reimburse EPA, with particular limitations, for EPA and DOJ costs incurred in connection with the Decree. The monies recovered from GE are placed in a site-specific fund for future funding of EPA activities under the Decree. Since Decree entry in October 2000, the Region has recovered over \$40 million from GE of costs incurred in connection with the Decree. Contact: Dean Tagliaferro, 617-918-1282; Joan Buonopane, 617-918-1227; Tim Conway, 617-918-1705.

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## Region 2

### Regular Highlights:

#### **Enforcement and Compliance Assurance Issues**

##### **Entry of CWA Consent Decree in *U.S. v. New York Racing Association, Inc.***

On March 3, 2017, the U.S. District Court for the Eastern District of New York entered our consent decree with the New York Racing Association, Inc. (NYRA) in a Clean Water Act (CWA) case involving concentrated animal feeding operation (CAFO) violations at the Aqueduct Racetrack in Ozone Park, New York. The entry of the consent decree occurred only one year after the date that Region 2 referred the case to DOJ, seeking injunctive relief and civil penalties against the NYRA. The Aqueduct Racetrack operates a CAFO during horse racing season (October to April) and houses up to 450 horses on-site. It is therefore required to be covered by the New York State CAFO General Permit, which prohibits the discharge of process wastewater from CAFOs to waters of the state, except as a result of a 25 year-24 hour storm event. Region 2's inspections revealed significant violations of the CAFO General Permit and the CWA, including the discharge of process wastewater from the CAFO to waters of the U.S. during dry weather. The facility generated and transferred an estimated 1.26 million gallons per year of process wastewater to what NYRA thought to be a sanitary sewer. However, based on drainage specifications provided by the state and city and EPA's own observations, wash water produced at the facility flowed into the on-site storm drainage system and was pumped to a municipal separate storm sewer system and then discharged to a tributary to Jamaica Bay. Under the consent decree, the defendant is paying a \$150,000 civil penalty and is required to: eliminate the discharge of all process wastewater into the storm drains at the facility; develop and implement a process wastewater elimination plan and horse washing standard operating procedures utilizing constructed wash bays located within the barns; develop a stormwater-related page on the NYRA's public website that will include weekly stormwater inspection results and compliance status (**Next-Gen**); and submit and post online quarterly and annual compliance reports. Finally, the defendant is performing a \$100,000 SEP consisting of the planting of trees at NYRA's Belmont Park Racetrack; these trees are designed to receive and reduce approximately 45,619 gallons per year of stormwater runoff from the CAFO areas to Jamaica Bay. Contact: Phyllis Feinmark, 212-637-3232; Kimberly McEathron, 212-637-4228.

##### **Confirmation Order Entered in the Multi-Regional Bankruptcy Action of Vertellus Specialties Inc. et al.**

On February 24, 2017, the Bankruptcy Court for the District of Delaware issued an order confirming the Chapter 11 Plan of Liquidation in the bankruptcy proceeding of Vertellus Specialties, Inc., et al. The confirmation order, which resolves the bankruptcy proceeding, approves an Environmental Response Trust (ERT) Agreement by and among VSI Liquidating Inc. (formerly known as Vertellus Specialties, Inc.), the bankruptcy trustee, the United States, and a number of states. The ERT will, among other things, address environmental remediation at a number of sites, including in other EPA regions, and pursue insurance claims for the benefit of the ERT and the ERT beneficiaries. Pursuant to an insurance allocation performed by an expert

retained by DOJ, EPA Region 2 will recover (for the Diamond Alkali Superfund Site in New Jersey) 2.45% of future insurance proceeds recovered by the ERT. Vertellus Specialties is the corporate successor of Reilly Industries Inc., which owned and operated a facility from which hazardous substances were released into the Lower Passaic River, a part of the Diamond Alkali Site. Contact: Frances Zizila, 212-637-3135; Sarah Flanagan, 212-637-3136.

**Region 2 Resolves RCRA Case Against New York City Dept. of Health and Mental Hygiene**

On March 3, 2017, Region 2 finalized an administrative settlement with the City of New York for alleged RCRA violations at its Department of Health and Mental Hygiene (DOHMH). Among other things, DOHMH has executive or operational responsibilities for the Public Health Laboratories in NYC, which diagnose medical illnesses and diseases and do testing for pathogens and/or toxins associated with disease outbreaks, bioterrorism or toxic compounds. Region 2's administrative complaint had cited DOHMH for failing to: a) make hazardous waste determinations; and b) obtain a permit to operate a hazardous waste management facility or to satisfy conditions which would have obviated the need to have a permit. In the settlement, DOHMH has agreed to pay a civil penalty of \$43,000 and to comply with New York's authorized hazardous waste regulations. Contact: Jeannie Yu, 212-637-3205; Abdool Jabar, 212-637-4051.

**Region 2 Settles EPCRA Section 313 Administrative Case with New Jersey Coatings Manufacturer, Lamart Corp.**

On March 3, 2017, Region 2 signed a consent agreement and final order (CAFO) resolving multiple violations of EPCRA § 313 by Lamart Corporation, a manufacturer of custom coatings and laminated products. Pursuant to the CAFO, Lamart will pay a cash penalty of \$20,000 for its failures to submit to EPA and the State of New Jersey complete and correct Form R reports for a TRI chemical processed at its Clifton, New Jersey facility in calendar years 2010, 2011, 2012, and 2013. In addition, Lamart will undertake, as a Supplemental Environmental Project, the purchase and installation of a solvent recovery system at a cost of at least \$136,016. Lamart estimates that the system will achieve an overall solvent recovery rate of 60% to 65%, which will decrease the amount of solvent processed by the facility by approximately 130,000 pounds per year. Contact: Gary Nurkin, 212-637-3195; Emily Nering, 732-321-6764.

**Defendant's Motion Denied in U.S. v. PRIDCO Regarding Maunabo Groundwater Site**

On February 24, 2017, in an EPA CERCLA cost recovery action, the U.S. District Court for the District of Puerto Rico denied a motion by the defendant, the Puerto Rico Industrial Development Company (PRIDCO), for leave to implead certain parties as third-party defendants. The matter concerns the Maunabo Groundwater Superfund Site, an NPL site located in Maunabo, Puerto Rico. The United States opposed the motion, arguing that adding the new parties would further delay what has already been a lengthy discovery process and would unnecessarily complicate fact-finding, resulting in prejudice to the United States. The United States also requested that the case be trifurcated into three phases: a liability phase, a cost phase, and lastly, a contribution phase. The court agreed to the U.S.'s request. PRIDCO owns the industrial park from which one of three plumes at this multi-plume site is emanating. EPA's past

costs at the Site exceed \$4.8 million, and the estimated cost of implementing the selected remedy is \$7.46 million. Contact: Henry Guzman, 212-637-3166.

**EPA Issues CWA Compliance Order Against Peñuelas Valley Landfill, LLC and E.C. Waste, LLC**

On March 1, 2017, Region 2 issued an administrative compliance order against Peñuelas Valley Landfill, LLC and E.C. Waste, LLC for violations of the 2015 NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the “2015 MSGP”). Respondents are the current owners and/or operators of a landfill in Peñuelas, Puerto Rico, known as the Peñuelas Valley Landfill. EPA conducted a compliance evaluation inspection of the landfill and found, among other things, that Respondents had failed to implement adequate structural and non-structural best management practices to minimize the discharge of pollutants into waters of the United States. The order requires the Respondents to develop a work plan, for EPA’s review and approval, to achieve compliance with the 2015 MSGP. Contact: Jaime López, 787-977-5851; Evelyn Rivera-Ocasio, 787-977-5859.

**U.S. District Court Rules on Motion to Compel in *U.S. v. Acquest Transit, LLC, et al.***

On February 21, 2017, the U.S. District Court for the Western District of New York issued a ruling on the defendant’s motion to compel discovery in *U.S. v. Acquest Transit, LLC, et al.* The court largely denied the motion, which sought production of several hundred records that the government had withheld as attorney work product. Based on an affidavit submitted by ORC attorney Phyllis Feinmark, the court reasoned that EPA had reasonably anticipated litigation at least as early as October 10, 2007 (when Acquest refused the EPA entry onto its property to inspect for possible illegal discharges of fill material into wetlands) and that all records created by government attorneys in the matter after that date were privileged. The court ordered production of a few documents and directed the government to confirm the dates of several undated documents to determine whether they were privileged. Contact: Chris Saporita, 212-637-3203; Phyllis Feinmark, 212-637-3232.

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## Region 3

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region III and Virginia Dept. of Environmental Quality Enter into a Modification to the Virginia Voluntary Remediation Program Memorandum of Agreement to Recognize Virginia's Enhanced Enforcement Options

On March 1, 2017, the Acting Regional Administrator for Region III executed a modification to the Virginia Voluntary Remediation Program (VRP) Memorandum of Agreement (MOA). The Virginia Department of Environmental Quality (VADEQ) had executed the modification to the VRP MOA on February 23, 2017. The Virginia VRP MOA was originally executed on January 11, 2002. The primary purpose of the modification is to formally recognize VADEQ's newly developed Remediation Consent Order (RCO). The RCO provides VADEQ with an enforcement tool to enhance its VRP by ensuring compliance with agreed upon cleanups. Region III and VADEQ successfully collaborated to integrate the RCO program into VADEQ's existing VRP. Contact: Thomas Cinti, 215-814-2634; Stacie Driscoll, 215-814-3368.

##### Region III Sends Advisory Letter Listing Alleged RCRA Violations and Closure Requirements for Peake Delancey Printers LLC Facility in North East, MD

On March 2, 2017, Region III sent to Peake Delancey Printers LLC a letter advising the company of violations of RCRA previously found at the company's commercial lithographic printing facility, located in Hyattsville, MD (Facility), and requiring the company to submit a Closure Plan and RCRA Closure Report to EPA. In January 2017, Peake decided to close the Facility, following the death of the Facility owner. This Letter requires Peake to conduct its planned shutdown of the Facility in accordance with RCRA regulatory closure requirements. The letter also advises Peake of the alleged violations found during a March 2016 Inspection of the Facility. EPA inspectors observed that the company: (1) operated the Facility without a permit, interim status or valid exemption; (2) failed to make a hazardous waste determination on aerosol cans; (3) failed to keep hazardous waste containers closed except when necessary to add or remove hazardous waste; (4) failed to conduct effective inspections of <90-day hazardous waste storage area; (5) failed to provide initial and refresher hazardous waste training to employees in positions responsible for hazardous waste management; (6) failed to submit two Biennial Reports to MDE; (7) failed to maintain several copies of hazardous waste manifests signed by the receiving facility; and (8) failed to properly manager universal waste lamps. Contact: Natalie Katz, 215-814-2615; Rebecca Serfass, 215-814-2047.

##### Hearing Held Regarding Motion for Reconsideration of Order Denying Stipulated Motion to Extend Time for Responsive Pleadings and to Stay Proceedings Filed in *Transportation Ins. Co., et al. v. Poor Charlie and Company, et al.* (Civ. Action No. 1:16-cv-00049)

On March 6, 2017, the parties participated in a motion hearing (via conference call) before the court on their Motion for Reconsideration of Order Denying Stipulated Motion to Extend Time

for Responsive Pleadings and to Stay Proceedings. Although the United States has not yet moved to enter the litigation, the parties invited the United States to participate in the hearing. The court granted the motion to extend the responsive pleading deadline until March 31, 2017, but denied the motion to stay the case. The court indicated that there is no reason for the United States to rush to intervene because it is involved in the settlement negotiations. The court also indicated that if the parties have an agreement in principle by March 31, 2017, which would still need to be approved by the appropriate officials, she would entertain another motion to stay. Otherwise, if there is no agreement in principle by that date, the United States will move to intervene and settlement negotiations would proceed on a parallel track. On January 19, 2017, EPA entered a Consent Decree with Poor Charlie for the Twin Cities Iron and Metal Superfund Site, Civ. Action No. 1:16-cv-00043, in which, among other things, Poor Charlie assigned to the United States its rights to claims proceeds from its insurance policies. The Consent Decree provides that in the event that an insurer brings a declaratory action on an insurance policy, the United States shall seek to dismiss the action as to Poor Charlie or to substitute itself for Poor Charlie, on the basis of the assignment rights conferred by the Consent Decree. Contact: Robin Eiseman, 215-814-2612; Mary Rugala, 215-814-2686; Carlyn Prisk, 215-814-2625.

**Multi-Media Administrative Settlement with the U.S. Dept. of the Navy [Docket No. RCRA/CAA-03-2017-0005]**

On March 8, 2017, a Consent Agreement and Final Order (CAFO) between Region III and the U.S. Department of the Navy (Navy) was filed with the Regional Hearing Clerk. The CAFO resolved alleged violations of Subtitle C of RCRA and the CAA discovered by EPA during a multimedia inspection at the Washington Navy Yard (Facility) on June 5-7, 2012. The settlement requires the Navy to pay a total penalty of \$84,100. Additionally, although the CWA does not permit EPA to assess penalties against federal entities like the Navy for violations prior to the execution of the CAFO, EPA worked with the Navy to address National Pollution Discharge Elimination System (NPDES) and Spill Prevention Control and Countermeasures (SPCC) compliance issues at the Facility. Contact: Gracie Pendleton, 202-564-2588; Wilbur Martinez, 410-305-3026; Allison Gardner, 215-814-2631.

**EPA Signs Environmental Covenant for Real Property Located at the Georgia Avenue PCE Superfund Site in Washington, DC [Civil Action No. 1:14-cv-01625]**

On March 8, 2017, Division Director Karen Melvin executed an Environmental Covenant for real property located at 6143 Georgia Avenue, NW, Washington, DC (the Property). The Property is owned by George A. Spanos, as trustee, and is part of the Georgia Avenue PCE Superfund Site. The execution and recording of this Environmental Covenant are requirements under a Consent Decree with Mr. Spanos entered by the court on February 23, 2017. EPA performed a Fund-lead removal action at the Site from 2009 to 2011 to mitigate releases of the hazardous substance, perchloroethylene (PCE), from a dry-cleaning facility operating at the Property. As part of the removal action, EPA installed sub-slab depressurization systems (SSDS) at the Property, and in an adjacent building housing a day-care center. The Environmental Covenant, which conforms with the requirements of the District of Columbia Uniform Environmental Covenants Act, D.C. Code §§ 8-671.01-671.14, will run with the land and bind any future owners of the Property. Current and future owners of the Property will be prohibited

from interfering with or shutting down the operation of the SSDS. In addition, current and future owners of the Property will be required to operate and maintain the SSDS under EPA oversight. Contact: Robert Hasson, 215-814-2672; Carlyn Prisk, 215-814-2625.

**Environmental Covenant for Real Property Recorded in Connection with the Former Tyco (AMP) Electronics Facility Located in Glen Rock, York County, PA**

On January 27, 2017, the Penn-Mar Organization, Inc., the current owner of the former Tyco (AMP) Electronics Company Facility property, recorded an Environmental Covenant, with the Recorder of Deeds for York County, Pennsylvania. The environmental covenant implements institutional controls selected in EPA's August 30, 2016 Explanation of Significant Differences describing modification of the EPA's 1991 Corrective Measures for the Facility located in Glen Rock, Pennsylvania. The institutional controls will prohibit the use of groundwater in, on, or under the Property except the extraction of groundwater for groundwater monitoring, or site remediation, provided that, EPA provides prior written approval of such ground water monitoring and site remediation. There is also a prohibition of the installation or operation of new unless EPA provides prior written approval of such installation and operation. The environmental covenant provides that the property shall be used for non-residential purposes only with EPA's prior written approval. The Environmental Covenant also grants to EPA a reasonable right of access to the Facility in connection with enforcement of the Environmental Covenant and to conduct any activity relating to response actions at the Facility. Contact: Yvette Hamilton, 215-814-2678; Khai Dao, 215-814-5467.

**CWA Settlement with City of Bowie, MD**

A Clean Water Act (CWA) Consent Agreement and Final Order (CAFO) has been negotiated, and signed, in settlement with the City of Bowie, Maryland for Clean Water Act (CWA) violations of Bowie's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Small Municipal Separate Storm Sewer Systems (the General Permit) issued for Bowie's municipal separate storm sewer system (MS4). The alleged violations included: (1) failure to submit annual stormwater program reports; (2) failure to develop and implement all required procedures for the detection of illicit discharges; and (3) failure to comply with all pollution prevention and good housekeeping measures. The violations were discovered as part of an EPA June 2015 inspection of Bowie's MS4.

The CAFO requires Bowie to pay a civil penalty of \$27,500. Region III received no comments on the CAFO during the required 40-day public comment period. Contact: Bonnie Pugh, 215-814-2680.

**Acting Division Director, Water Protection Division Issues Show Cause Letter to Vico Construction Corp. of Virginia for Stormwater Violations Associated with Construction Activities**

On February 23, 2017, the Acting Division Director for the Water Protection Division issued a Show Cause letter to Vico Construction Corporation for violations of its 2014 General Permit for Stormwater Discharges Associated with Construction Activities for five different facilities in Virginia, including Culpepper Landing, Dominion Meadows, Hanbury Manor, Joliffe Landing

Townhouse, and Joliffe Landing Commercial Center. The 2014 General Permit authorized operators of construction activities to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in the State Water Board regulations that prohibit such discharges. EPA became aware of the violations during the September 15 and 16, 2015 facility inspections to ascertain whether Vico's construction sites were in compliance with the Virginia Stormwater Management Program (VSMP). A draft Administrative Order on Consent and draft Consent Agreement and Final Order were also enclosed. Contact: Pam Lazos, 215-814-2658; Rebecca Crane, 215-814-2389.

**Region III Issues Show Cause Letter to JLD Services, Inc. for Alleged Violations of the Lead-Based Paint Renovation, Repair, and Painting Rule at Residential Target Housing Property in Williamsport, PA**

On March 2, 2017, the Region issued a Notice of Noncompliance and Request to Show Cause letter to JLD Services, Inc., d/b/a 360 Painting of Northeast PA. (hereinafter, "JLD"), for alleged violations of the Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule at a private "target housing" home in Williamsport, Pennsylvania. An EPA inspection of the "target housing" property, built in 1901, and a review of associated documentation, led EPA to allege that JLD failed to comply with several RRP Rule certification, work practice and recordkeeping information requirements. The alleged violations include JLD's failure to: obtain the required initial firm certification from EPA; obtain from the Property owner a written acknowledgment that the owner received a copy of the EPA-approved lead hazard information pamphlet within 60 days of the beginning of renovation activities; post signs clearly defining the work area, in violation of; ensure that waste collected from renovation activities was stored in a manner preventing access to dust and debris and preventing releases of dust and debris from the work area; make available documentation of compliance with each of the work practice standard requirements; and ensure that all individuals who performed renovation activities were certified renovators (or had been trained by a certified renovator), and that a certified renovator was assigned to the renovation and discharged all applicable certified renovator responsibilities. The Show Cause letter further advised JLD that it may be eligible for penalty mitigation pursuant to EPA's recently extended May 3, 2012 *Pilot RRP Penalty Program for Micro-Businesses* (Micro-Business Policy) and the type of information that it can provide to substantiate such eligibility. Contact: A.J. D'Angelo, 215-814-2480; Noelle Watanabe, 215-814-3171.

**ORC and CID Participate in New Inspector Training**

Under the direction of Garth Connor, Region 3 Office of Enforcement, Compliance and Environmental Justice, and David Abbott, EPA Region IV, EPA Region III hosted Basic Inspector Training for EPA and state inspectors on March 7-9, 2017. ORC attorneys and a CID agent gave presentations on the Enforcement Process (Joyce Howell), Criminal Investigations (Martin Harrell and Gregory McDowell, CID), and Evidence (Daniel Isales). Contact: Joyce Howell, 215-814-2644; Marin Harrell, 215-814-2638; Daniel Isales, 410-305-3016.

OGC Issues

**Complaint Filed Challenging Chesapeake Bay TMDL [*James River Dischargers Coalition et al v. EPA et al.*, Civil No. 3-16-00089 (W.D. VA)]**

On March 3, 2017, the court in the above captioned case granted Plaintiffs' Motion for a ninety (90) day extension of time to serve summonses and the Complaint on Defendants United States Environmental Protection Agency (EPA) and its Administrator. Plaintiffs, the James River Dischargers Coalition, along with the Virginia Association of Municipal Wastewater Agencies (VAMWA) and the Virginia Manufacturers Association, filed a Complaint December 23, 2016. Plaintiffs have until June 3, 2017 to serve the Complaint upon EPA. The parties will continue settlement discussions during that period of time.

Plaintiffs challenge EPA's establishment of the 2010 Chesapeake Bay TMDL, specifically the nitrogen and phosphorus wasteload allocations (WLAs) for the James River (James River allocations). Apart from challenging EPA's legal authority and the record basis for the James River allocations, Plaintiffs challenge EPA's post-TMDL activities concerning reevaluation of water quality standards and NPDES permits for the James River. EPA established the final Bay TMDL on December 29, 2010 pursuant to Section 303(d) of the Clean Water Act ("CWA") to address nitrogen, phosphorus, and sediment pollution impairing the aquatic life uses of the Chesapeake Bay. VAMWA was an Intervenor-Defendant supporting the Bay TMDL in the *American Farm Bureau Federation et al v. EPA et al*, 792 F.3d 281 (2015) (*cert. den.* 2/29/16). That decision upheld EPA's authority and record establishing the Bay TMDL. Contact: Chris Day, 215-814-2481; Kelly Gable, 215-814-2471; Jim Curtin, 202-564-5482.

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## Region 4

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Court Enters Consent Decree for Interim Remedial Design and Remedial Action at the CTS of Asheville, Inc. Superfund Site

On March 7, 2017, a Magistrate Judge for the U.S. District Court for the Western District of North Carolina signed the Consent Decree (CD) for Interim Remedial Design and Remedial Action at the CTS of Asheville, Inc. Superfund Site in Asheville, Buncombe County, North Carolina. The CD requires the Settling Defendants, CTS Corporation, Mills Gap Road Associates, and Northrop Grumman Systems Corporation, to spend an estimated \$8.8 million to undertake a two-step process to treat the source of Non-Aqueous Phase Liquid (NAPL) and trichloroethene (TCE) contamination in the groundwater beneath the former electronics manufacturing and electroplating facility at 235 Mills Gap Road in Asheville. The CTS of Asheville, Inc. Superfund Site was the location of an electronics manufacturing and electroplating facility that operated from 1952 until 1983. The electroplating process involved the use of a vapor degreaser in which TCE was used to clean parts to be plated. As a result of everyday operations over the decades, the groundwater at the site is contaminated with chlorinated solvents, such as TCE, cis-1,2-dichloroethene (cis-DCE), and 1,1,1-trichloroethane (TCA), which are hazardous substances. TCE was detected in groundwater at levels which exceed the EPA drinking water standard of 5 parts per billion. These contaminants pose a potential risk to human health and the environment, particularly through air inhalation and/or drinking water. Contact: Stacey Haire, 404-562-9676; Craig Zeller, 404-562-8827.

##### Region 4 Meets with Stakeholders at the Kerr-McGee AgChem Site in Jacksonville

On March 1, 2017, the EPA, FDEP, and the Greenfield Environmental Trust (Trust) met with a number of Stakeholders at the Kerr-McGee AgChem Site in Jacksonville, Florida. The Trust was established to take ownership of many former Kerr-McGee properties, and to perform environmental actions at those properties. Included were representatives of JM Family Enterprises/Toyota (JMFE), their legal counsel, and JaxPort. JMFE is the lessor of property adjacent to the Trust's property. The purpose of the meeting was to provide an update of the status of the project, and to address the continued concerns of JMFE regarding potential disruptions of JMFE's activities at their facility. During the meeting, JMFE informed the EPA and FDEP of their plan to demolish and replace a number of buildings at their facility. Site-impacted soil will not be disturbed since the buildings are on-slab and they will be replaced in-kind. The EPA and the Trust also discussed scheduling with JMFE, as well as a number of personnel changes and new contacts at FDEP and JaxPort. JMFE requested another meeting prior to the beginning of the preliminary Site work, to include the Trust's contractor after they have been selected. That meeting will likely be in the fall.

Also, the EPA met with members of the Army Corps of Engineers on March 2, 2017. They had requested an opportunity to discuss their capabilities to perform environmental remediation at the Site. Contact: Kevin Beswick, 404-562-9580; Robinson Joseph, 404-562-8891.

**Region 4 Enters Into an Administrative Compliance Order on Consent with Mt. Olive Pickle Company for Injunctive Relief to Resolve CWA Violations at its North Carolina Facility**

On March 3, 2017, Region 4 executed an Administrative Compliance Order on Consent (AOC) with Mt. Olive Pickle Company, Inc. (Mt. Olive), to resolve violations of Section 301(a) of the Clean Water Act. Specifically, the EPA alleged that Mt. Olive was discharging pollutants from its facility without having submitted a Notice of Intent to obtain coverage pursuant to North Carolina's General Permit No. NCG060000 to Discharge Stormwater under the National Pollutant Discharge Elimination System. Mt. Olive provides that it has now obtained proper permit coverage and agrees to perform additional injunctive relief measures, including submitting a copy of its certificate of coverage under the permit, performing additional sampling, establishing a vegetated buffer, and if appropriate, evaluating and implementing additional best management practices. Contact: Kavita Nagrani, 404-562-9697.

**Region 4 Files Consent Agreement and Final Order with Alltech, Inc. to Resolve Alleged Violations of CERCLA 103(a) and EPCRA 304 Violations**

On March 7, 2017, EPA Region 4 filed a Consent Agreement and Final Order (CAFO) with Alltech, Inc. of Nicholasville, Kentucky to resolve an alleged violation of Section 103(a) of CERCLA and alleged violations of Sections 304(a) and (c) of EPCRA. Under the CAFO, the company will pay a penalty of \$5,763 for the CERCLA violation and \$11,527 for the EPCRA violations. Contact: Vinson Poole, 404-562-9186; Michiko Kono, 404-562-9558.

**OGC Issues**

**D.C. District Court Sets Favorable Deadline for EPA to Issue CAA Title V Petition Orders re: Two Duke Energy Progress Plants in North Carolina**

In June 2016, Sierra Club filed petitions with the EPA asking the Agency to object to Title V permits issued by the State of North Carolina to the Asheville Steam Electric Plant and the Roxboro Steam Electric Plant – two coal-fired power plants owned by Duke Energy Progress, LLC. Sierra Club believes that these permits lack sufficiently stringent sulfur dioxide (SO<sub>2</sub>) limits and a schedule for compliance with violations of the 1-hour SO<sub>2</sub> National Ambient Air Quality Standards modeled by Sierra Club.

Because the EPA did not grant or deny the petitions within the 60-day timeframe required by the Clean Air Act (CAA), Sierra Club filed a complaint and motion for summary judgment with the U.S. District Court for the District of Columbia in November 2016 seeking a court order: 1) declaring the EPA to be in violation of its statutory duty to grant or deny the petitions within 60 days, and 2) requiring the EPA to grant or deny the petitions within 30 days of the court's ruling. In response, the EPA acknowledged that the Agency did not meet the statutory timeframe to issue Title V petition orders and asked the court for a June 30, 2017 deadline, explaining EPA's

process for placing petitions in the que for response. In its March 2, 2017 Order, the court accepted EPA's explanation of the needed timeframe for action and set a deadline of June 30, 2017, for the Agency to act on the Title V petition orders. Contact: Eric Triplett, 404-562-9027.

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## Region 5

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region 5 Reaches a Consent Agreement with BASF Corp. for EPCRA and CERCLA Violations

On March 8, 2017, Region 5 filed a consent agreement and final order with Respondent, BASF Corporation. The order commenced and concluded an action for alleged violations of Section 304(a) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11004(a), and Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9603. Region 5 alleges that on March 30, 2016, Respondent released ethylene oxide, an extremely hazardous substance, in the amount of approximately 450 pounds, which is greater than the reportable quantity (10 pounds). The alleged release occurred at Respondent's Wyandotte, Michigan facility. Region 5 alleges that Respondent failed to immediately notify the National Response Center, the state emergency response commission, and the local emergency planning committee. Respondent will pay a penalty of \$16,588, and will complete a supplemental environmental project, in which Respondent will purchase approximately \$62,289 worth of emergency response equipment for the Wyandotte Fire Department. The BASF Wyandotte facility manufactures various specialty plastics and urethane products used in the automotive, furniture, electronic, and industrial sectors and has approximately 1200 employees. BASF SE, which owns BASF Corporation, had approximately \$74 billion in revenues and 112,435 employees worldwide at the end of 2015. Contact: Jillian Rountree, 312-353-3849; James Entzminger, 312-886-4062.

##### Owners and Operators of Wisconsin Foundry Charged with Criminal Offenses

On March 7, 2017, a federal grand jury returned an indictment against the corporate owners of the former Grede Foundry in Berlin, Wisconsin. Also charged were Peter J. Mark of Ixonia, Wisconsin, the corporate safety and environmental director; and Steven G. O'Connell and Christy L. McNamee, both of Zanesville, Ohio, who were formerly employed at the now shuttered facility. The seven-count indictment alleges charges of conspiracy, obstruction of a federal investigation, the making of false statements, violations of the federal Clean Air Act and negligent endangerment.

According to the indictment, between October 2011 and January of 2012, workers at the foundry were ordered to assist in the refurbishment of a heat-treat oven which contained dangerous amounts of chrysotile asbestos. The corporate owners of the facility and the foundry's managers failed to implement proper asbestos-abatement procedures. Workers were provided with inadequate safety equipment and were not told that the material they were removing contained asbestos. As a result, the workers were exposed to large quantities of asbestos-laden dust.

The indictment further alleges that Mark, O'Connell, McNamee, and the corporate defendants conspired to obstruct state and federal investigators during subsequent inquiries into the presence of asbestos during the refurbishment of the oven.

If convicted of these offenses, Mark, O'Connell, and McNamee face maximum penalties ranging from 11 to 41 years' imprisonment, as well as hundreds of thousands of dollars in fines. The corporate defendants face criminal fines of up to \$3.2 million.

This case was investigated by the Wisconsin Department of Natural Resources, Warden's Service, the U.S. Environmental Protection Agency's Criminal Investigation Division, and the U.S. Department of Labor's Office of Inspector General. It is being prosecuted by attorneys from the U.S. Attorney's Office in the Eastern District of Wisconsin. Contact: James Cha, 312-886-0512.

**EPA and Brennan Farm Enter Into a CWA Consent Order for Compliance Requiring Brennan Farm to Eliminate Unauthorized Discharges**

On March 2, 2017, EPA and Brennan Farm of Lake Geneva, Wisconsin, entered into a Clean Water Act Consent Order for Compliance under Sections 308(a) and 309(a) requiring Brennan Farm to, among other things, eliminate an unauthorized discharge of pollutants to the waters of the United States. Brennan Farm operates a medium concentrated animal feeding operation ("CAFO")(cows). In the Consent Order Brennan Farm agrees to, among other things, eliminate unauthorized discharges from its CAFO that eventually discharge into waters of the United States (Nippersink Creek and ultimately the Fox River). Contact: Jeffrey Cahn, 312-886-6670; Joan Rogers, 312-886-2785.

**Region 5 Lodges CAA & RCRA Consent Decree with the Maynard Steel Casting Company**

On March 1, 2017, the United States Department of Justice and the United States Environmental Protection Agency, Region 5 simultaneously filed a Complaint and Consent Decree settling alleged Clean Air Act ("CAA") and Resources Conservation and Recovery Act ("RCRA") violations by the Maynard Steel Casting Company at its Milwaukee, Wisconsin, facility ("Facility").

The Complaint alleges violations of Section 502 of the CAA (Title V permits), and the federally enforceable State Implementation Plan adopted by the State of Wisconsin and approved by EPA. The CAA violations include exceeding particulate matter and manganese (a hazardous air pollutant) emissions limits in the Facility's Title V permit and failing to operate its electric arc furnaces ("EAFs") in conformance with good air pollution control practices for minimizing emissions (also required by the Title V permit). The Complaint also alleges violations of RCRA, including failing to test EAF dust, failing to prepare hazardous waste manifests, and failing to maintain and operate the Facility to minimize the possibility of a release of hazardous constituents to air or soil. The Consent Decree resolves these alleged violations. Under the terms of the Consent Decree, to address the CAA violations, Maynard will perform various compliance measures, including installing and operating a parametric monitoring system on each EAF, installing and operating a bag leak detection system on each EAF, completing performance tests

at the EAF baghouse stacks, and performing air quality modeling to demonstrate compliance with the applicable PM<sub>10</sub> emissions standards. Maynard has performed various RCRA compliance measures including testing and shipping the collected EAF dust offsite as hazardous waste, building containment systems to prevent the release of hazardous waste EAF dust to the environment, and training its employees prior to the filing of the complaint. No additional RCRA compliance measures are required in the Consent Decree. Maynard will also a civil penalty of \$25,000 of which \$16,250 is for violations of the CAA and \$8,750 is for violations of the RCRA. This civil penalty is based on an evaluation of the financial information provided by Maynard Steel, which has a limited ability to pay a civil penalty. The Consent Decree is subject to a 30-day public comment period between lodging and entry.

This Consent Decree contains NextGen projects/measures: the Consent Decree includes a protocol for performing opacity observations during the night since EAF melting operations at the Facility normally occur from 8 pm to 8 am.

This Consent Decree addresses a National Enforcement Initiative: Cutting Hazardous Air Pollutants. Contact: Catherine Garypie, 312-886-5825; Greg Gehrig, 312-886-4434; Michael Beedle, 312-353-7922.

#### **Region 5 Files a CAA Consent Agreement with Ferrara Candy Company**

On February 28, 2017, Region 5 filed a consent agreement and final order (CAFO) with Respondent, Ferrara Candy Company (Ferrara), commencing and concluding an action for alleged violations of the Clean Air Act (CAA). Region 5 initiated this enforcement action in October 2015 by conducting a CAA inspection of the Ferrara facility. The CAA allegations stem from Ferrara's failure to comply with several provisions of its Federally Enforceable State Operating Permit (FESOP) issued by the Illinois Environmental Protection Agency pursuant to the Illinois State Implementation Plan. The alleged violations include failure to properly operate, maintain and monitor the company's air pollution control equipment (a catalytic oxidizer), as well as failure to comply with specified record keeping requirements. In addition to the CAFO, Ferrara executed an Administrative Consent Order on December 20, 2016, pursuant to which Ferrara must achieve, demonstrate and maintain compliance with its FESOP. Ferrara will pay a penalty of \$158,500 pursuant to the terms of the consent agreement. Ferrara is a candy manufacturer, located in Forest Park, Illinois and employs approximately 1,100 people. Contact: Deborah Carlson, 312-353-6121; Scott Connolly, 312-886-1493.

#### **Region 5 Issues RCRA Section 7003 Order on Consent to OXY USA, Inc.**

On February 28, 2017, EPA issued an Order on Consent to OXY USA, Inc. (OXY) under Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, to address the imminent and substantial endangerment from solid wastes and/or hazardous wastes at the Cline Avenue Oil Spill Site in Gary, Indiana (Site). From 2011 to the present, EPA has been responding under Section 311 of the Clean Water Act to the release and discharge of oil and petroleum wastes from the Site into a ditch that flows to the Grand Calumet River.

The Order requires OXY to: take over responsibility for booming operations to collect and dispose of the oil and petroleum wastes seeping into the ditch at the Site; conduct an investigation of groundwater at the Site; and conduct a Design Investigation/Focused Feasibility Study (DI/FFS) of containment options to permanently abate the seepage of oil and petroleum wastes from the Site. The DI/FFS may consist of a barrier wall and oil/water separator system or other measures providing comparable protection to human health and the environment. The Order requires OXY to submit the DI/FFS work plan within 60 days of the signed AOC, and to submit the DI/FFS report identifying the response measures to permanently prevent oil from entering the ditch within 180 days from receiving EPA's approval on the work plan. EPA plans to require the implementation of the agreed-upon permanent response measures through a separate order.

A predecessor to OXY used the Site as a storage and disposal site for oil and petroleum waste from 1929 to 1975. The Site remained mostly unused until 2012, when the Gary/Chicago International Airport Authority acquired part of the Site for an airport expansion project. The area of the Site where the oil is entering the ditch and where the most significant contamination is located is currently owned by a defunct trust. Contact: Tom Krueger, 312-886-0652; Kasey Barton, 312-886-6173; Mike Beslow, 312-886-8678; Todd Gmitro, 312-886-5909.

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## Region 6

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region 6 Files a Consent Agreement and Final Order Resolving CAA Flaring Violations by LCY Elastomers, L.P., Baytown, TX

On March 8, 2017, 2015, EPA Region 6 filed a Consent Agreement and Final Order (CAFO) pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(1), involving flaring operations by LCY Elastomers, L.P. (“LCY”) synthetic rubber manufacturing facility in Baytown, Texas (“Facility”). The alleged violations in the case involve LCY’s failure to meet the minimum heat value of the vent gas being routed to the flares, as well as failure to maintain a 98% VOC disposal efficiency at the flares due to chronic over-steaming, in violation of LCY’s permit. These practices resulted in poor flaring combustion efficiencies, which has caused the release of excess emissions of hazardous air pollutants, such as 1,3 butadiene, and volatile organic compounds (VOC) in a sensitive non-attainment area (Houston-Galveston-Brazoria).

As part of the settlement, LCY agreed to install and operate improved monitoring systems at its flare and comply with a combustion zone net heating value standard that ensures high combustion efficiencies. In addition, LCY will pay a civil penalty of \$82,000, perform a mitigation action, and complete a Supplemental Environmental Project (“SEP”). The mitigation action entails the conversion of LCY’s existing nitrogen pressure system with a fully pumped tank system, which will reduce VOC emissions by an estimated 486 pounds per year. The SEP involves the completion of a comprehensive and independent air regulatory compliance audit of the Facility. Contact: Justin Lannen, 214-665-8130; James Leathers, 214-665-6569.

##### Wood Group PSN– CWA Criminal Sentencing – LA

On February 23, 2017, Wood Group PSN (WGPSN), West Delta Platform, appeared in the Western District of Louisiana for sentencing. WGPSN was sentenced pursuant to a proposed Rule 11 (c)(1)(C) plea agreement. WGPSN will pay a criminal fine of \$1.8 million dollars and pay an additional \$200,000 in community service to the National Marine Sanctuary.

##### Background:

On November 16, 2012, an explosion and fire occurred on the oil production platform identified as West Delta-32 which was owned and operated by Black Elk Energy (BEE) and located in the Gulf of Mexico (GOM) approximately 17 miles south of Grand Isle, Louisiana. The incident caused the deaths of three (3) crew members and caused severe burns and physical injuries to numerous employees on the platform. At the time of the explosion the platform was shut in and undergoing multiple construction operations. The explosion also caused the release of approximately 500 barrels of crude oil into the GOM from various production vessels.

On August 10, 2016, in Lafayette, Louisiana, pursuant to a Rule 20 transfer of plea agreement, Western District of Louisiana accepted Wood Group PSN'S (WGPSN) guilty plea to violating one misdemeanor count of the Clean Water Act, specifically 33 USC 1319 (c)(1)(A), for the illegal discharge of oil into the Gulf of Mexico in the Eastern District of Louisiana as it related to the Black Elk Energy criminal investigation. This case was investigated by the Baton Rouge Office of the EPA Criminal Investigation Division in conjunction with the Department of the Interior. Contact: Kristina Gonzales, 214-665-8139.

### **Region 6 to Host Financial Analysis Training**

On March 14-15, Region 6 will be hosting "Training in Financial Aspects of Enforcement Actions" training for Region 6 staff. This is a two day training covering economic benefit of noncompliance (the BEN model) and corporate, individual, and municipal ability to pay penalties/compliance costs (the ABEL, INDIPAY, and MUNIPAY models). Training is designed for enforcement staff with no or limited previous financial exposure and expertise. However, all are welcome to attend. There are 50 staff registered, with attendees from all Divisions with enforcement programs. This same training will be held at the Louisiana Department of Environmental Quality (LDEQ) in April, with all Region 6 states invited to participate either at LDEQ or via webinar. Contact: Connie Overbay, 214-665-7274.

### **Meeting with Backflow Prevention Services Regarding Compliance with an Administrative Order**

On March 7, 2017, staff and management from Region 6 Water Enforcement met with Backflow Prevention Services, representing St Martin Parish Waterworks District 4- Catahoula, regarding their cross connection program development and progress made toward complying with an Administrative Order filed August 1, 2016. Contact: Jessica Moore, 214-665-6495.

### **Storm Water Inspection of Fort Hood Army Base, Killeen, TX**

On March 6<sup>th</sup> – 7<sup>th</sup> 2016, Storm Water Inspectors Carol Johnson and Linda Smith conducted two compliance inspections at the Fort Hood Army base in Killeen, Texas. The inspections focused on the Federal facility's compliance with the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit requirements regarding Best Management Practices on active construction sites. The inspectors met with Fort Hood's Public Works Environmental Management crew, who selected the two construction sites that were inspected; a linear road improvement project, and a barracks construction project. Both sites were in full compliance with TPDES permit requirements. These inspections satisfy the Federal Facility Inspection ACS Commitment requirements. Contact: Carol Johnson, 214-665-8471; Linda Smith, 214-665-6641.

### **CWA Inspections of Brazos River Authority Facilities, City of Temple, TX, and City of Belton, TX**

In 1929, Texas legislature created the Brazos River Authority (BRA), primarily for the management of water supply, water quality, and surface water reservoirs in the watershed of the Brazos River in Texas. Currently, BRA operates a wastewater treatment plant (WWTP), named Doshier Farm WWTP, owned by the City of Temple, and another WWTP, named Temple/Belton WWTP, jointly owned by the cities of Temple and Belton, and a number of lift stations owned

by the cities of Temple and Belton, as a contract operator for both the cities. On February 28, 2017 through March 02, 2017 representatives of Water Enforcement Branch inspected the Doshier Farm WWTP, Temple/Belton WWTP, and the sewer collection/transportation systems of both the cities of Temple and Belton. Contact: Ted Palit, 214-665-8061.

**Site Visit of Abiquiu Mutual Domestic Water Consumers Association & Mutual Sewer Water Association, Abiquiu, NM**

On March 1, 2017, representatives from Region 6 Municipal/Industrial Section of the Water Enforcement Branch conducted a site visit in response to a citizen's report of a sanitary sewer overflow (SSO). The previous report stated a manhole was overflowing and raw sewage was flowing down to the intersection of Country Roads 189/187 and into Abiquiu Creek. Additionally, the report stated three (3) other manholes exhibited evidence of blockage. The overflowing manhole was vacuum pumped prior to the March site visit. Furthermore, recent storm activity in the near vicinity mitigated visible or aromatic evidence of the reported SSO. Contact: Amy Andrews, 214-907-0638; David Esparza, 505-366-8402.

**CWA Site Visit to the Luis Padilla Timber Operation, Abiquiu, NM**

On March 1, 2017, representatives from Region 6 Municipal / Industrial Section of the Water Enforcement Branch conducted a site visit to ascertain whether the facility meets the requirements of a categorical industrial user (CIU) who is discharging process wastewater to a non-pretreatment publicly owned treatment works (POTW). The site visit verified the location, current owner and confirmed wastewater is not discharged in the operation processes. Contact: Amy Andrews, 214-907-0638; David Esparza, 505-366-8402.

**Meeting with the Albuquerque Bernalillo Water Utility Authority**

On March 7, 2017, Region 6 Water Enforcement met with the Albuquerque Bernalillo Water Utility Authority (ABWUA). The purpose of the meeting was to evaluate ABWUA's NPDES compliance history and to gauge the progress made in addressing violations cited in Administrative Order CWA-06-2015-1733. ABWUA provided an update of their corrective action plan and identified upgrades made to the Southside Wastewater Reclamation Plant. Contact: Anthony Loston, 214-665-3109; Carol Peters-Wagnon, 214-665-3145.

**Webinar for the Region 6 Regional Sustainable Environmental Sciences (RESES) Research Project**

On March 10, 2017, the Regional Sustainable Environmental Sciences (RESES) Research Project Regional Lead, Stephanie Meyers, along with EPA's Office of Research Development and the contractor for the project, will be hosting a webinar regarding the use of Decision Analysis for a Sustainable Environment, Economy, and Society (DASEES). The RESES project is aimed to address the issues with waste runoff from the small dairy farms in Southeast Louisiana. DASEES is a structured decision making tool which will be used for this effort to effectively capture all of the factors that need to be considered when developing a remediation and restoration approach that will result in protection of human health and the environment. The next step will be to provide training to our State partners to include LDEQ and LDAFF in the near future. Contact: Stephanie Meyers, 214-665-6496.

## OGC Issues

### Texas 2008 Ozone Transport SIP Litigation

Texas filed a Petition for Review of EPA's disapproval of the State's transport SIP for the 2008 ozone standard in the United States Court of Appeals for the 5th Circuit (State of Texas, et al v. EPA; 16-60670). See our final action at 81 FR 53284 (Aug. 12, 2016). Luminant filed to intervene. Luminant and Texas (Petitioners) seek review of EPA's disapproval of a portion of a Texas State Implementation Plan submitted to address the effect of air pollution from Texas on downwind states and have filed their opening briefs. The Fifth Circuit has granted our motion to file the Texas SIP brief by May 1, 2017. (CLERK ORDER granting motion to file brief in excess of word count not to exceed 17,000 words filed by Respondents EPA and Mr. Scott Pruitt [8441800-3]; granting motion to extend time to file appellee's brief filed by Respondents EPA and Mr. Scott Pruitt [8441800-2] Appellee's Brief due on 05/01/2017 for Respondents Scott Pruitt and United States Environmental Protection Agency [16-60670]). Contact: Lynde Jones Schoellkopf, 214-665-7359.

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## Region 7

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region 7 Issues Lead RRP Records Subpoena to Renovation Firm in St. Louis

Region 7 has issued a subpoena to The Askins Development Group, LLC, under Section 11 of TSCA requiring submission of renovation records. The Askins Development Group, LLC, is a renovation firm that appears to have performed several dozen renovations on residential housing in St. Louis since at least 2012. The firm is not certified by EPA and the Agency has substantial evidence of noncompliance with the Renovation, Repair, and Painting Rule. The Askins Development Group must respond to the subpoena by March 27, 2017. Contact: Jared Pessetto, 913-551-7793.

##### Region 7 Issues CWA Administrative Compliance Order on Consent to Dr. Daniel J. McGowan:

On March 2, 2017, Region 7 issued an Administrative Compliance Order on Consent to Dr. Daniel J. McGowan of Kearney, Nebraska for violations of Section 404 of the CWA. In December 2011 and July 2012, Dr. McGowan discharged approximately 30,000 tons of sediment which had accumulated in a reservoir above a dam owned by Dr. McGowan into Plum Creek, a water of the United States. The unauthorized placement of fill material was done without obtaining a CWA Section 404 permit from the Corps of Engineers. In the Order on Consent, Dr. McGowan agreed to apply for a Section 404 permit for any and all future discharges from his dam, and to pay \$35,000 to a Plum Creek Stream Restoration Fund to be managed by the Middle Niobrara Natural Resources District. Through the fund, downstream property owners may pay for stream restoration and/or enhancement projects to remediate damages caused by the sediment releases. EPA is also pursuing administrative penalties. Contact: Chris Muehlberger, 913-551-7623; Liz Huston, 913-551-7525.

##### Region 7 Issues FIFRA Consent Agreement and Final Order to Drexel Chemical Company

On March 7, 2017, Region 7 entered into a multi-regional Consent Agreement/Final Order with Drexel Chemical Company, a producer and distributor of pesticides, in settlement of a variety of FIFRA violations. Region 4 is the other complainant. From review of information gathered during EPA inspections, the EPA documented that Drexel distributed/shipped products on multiple occasions from its manufacturing facility in China that had not been produced in accordance with a valid registration as required by Federal Insecticide, Fungicide and Rodenticide Act. In addition, Notices of Arrivals on imported products and studies in support of applications for pesticide permits contained inaccurate information. EPA and Drexel agreed to a settlement wherein Drexel will pay a civil penalty of \$141,200 and Drexel will complete a Supplemental Environmental Project involving implementation of a technology-based import tracking compliance system for document development and control of import tracking functions, estimated to cost approximately \$184,000. Contact: Anne Rauch, 913-551-7288.

## Region 8

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Stipulated Penalty Demand Letter Sent to Cenex Harvest States Refinery, Laurel, MT

On July 7, 2016, Region 8 sent Cenex Harvest States (CHS) a stipulated penalty demand letter for 21 flaring incidents covered by a pending consent decree which was entered in 2004. CHS accepted the EPA's determination for ten of the incidents and submitted payment of \$34,965 for them. Over the next several months, we had extensive conversations with the company, its counsel, EPA HQ and DOJ regarding the other eleven incidents. On March 7, 2017, Acting Assistant Regional Administrator Kim Opekar signed a letter resolving those eleven. CHS will pay an additional \$198,775, split between the U.S. and the State of Montana. Contact: David Rochlin, 303-312-6892; Scott Whitmore, 303-312-6317; Bob Gallagher, 406-457-5020.

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## Region 9

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Court Enters Stipulation of Settlement to Resolve CWA Violations by Matson, Inc.

On February 28, 2017 the U.S. District Court for Hawaii, entered a Stipulation of Settlement to resolve Matson Inc.'s violations of the CWA. Since at least July 17, 2012 Matson operated a leaking molasses pipeline at Honolulu Harbor that led to a catastrophic failure in September 2013 that killed over 25,000 fish and harmed coral reef. In a separate agreement with the State of Hawaii, Matson agreed to cease shipping molasses from Oahu and through this settlement with EPA, will pay a penalty of \$725,000. Contact: Eric Magnan 415-947-4179; Ellen Blake, 415-972-3496.

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## Region 10

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region 10 Issues FIFRA Stop Sale, Use, or Removal Order to Concentrates, Inc., Milwaukie, OR

EPA Region 10 issued a Stop Sale, Use, or Removal Order (SSURO) to Concentrates, Inc. (Milwaukie, Oregon) on February 23, 2017, to prevent the distribution and sale of the products, 50# Perma-Guard Fossil Shell Fuel – DE, 10# Fossil Shell Flour – DE, 5# Fossil Shell Flour – DE, 1# Fossil Shell Flour – DE, 40# Red Lake Earth – D.E., 6# Red Lake Earth – Animal Jug, 4# Red Lake Earth – Chicken Jug, 6# Red Lake Earth – Veggie Jug, 55# Boric Acid Granules, 5# Boric Acid Granules, 1# Boric Acid Granules, 3.5 Gal Vinegar Concentrate and 1 Gal Vinegar Concentrate. These products are being advertised and sold for pesticidal use. None of these products are registered with EPA as required by Section 3 of FIFRA. EPA uses stop sale orders to prevent the sale, distribution, or use of unregistered pesticides or pesticides with incorrect or inadequate labels to prevent harm to the public and the environment from unsafe chemicals or products. Contact: Brett Dugan, 206-553-8562; Bethany Plewe, 206-553-1192.

##### Expedited RCRA Settlement Agreement Entered for Electrofinishing Inc., Kent, WA

On March 1, 2017, Region 10 entered into an Expedited Settlement Agreement with Electrofinishing, Inc. to address Resource Conservation and Recovery Act (RCRA) violations at its facility in Kent, Washington. The violations involved failure to properly manage universal waste lamps, failure to properly manage used oil, and failure to properly manage hazardous waste containers. Under the terms of the Agreement, Electrofinishing, Inc. must certify that it has corrected the RCRA violations and pay a civil penalty of \$5,000. Contact: Jack Boller, 206-553-2953.

##### Region 10 Settles CWA Violations with Woodgrain Millwork, Inc., Fruitland, ID

On February 2, 2017, Region 10 filed a consent agreement and final order resolving violations of the Clean Water Act by Woodgrain Millwork, Inc. Respondent, which operates a wood product manufacturing facility, discharged pollutants to waters of the U.S. in violation of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP). Violations include failure to have a complete stormwater pollution prevention plan, failure to implement corrective action, failure to conduct inspections and failure to maintain control measures. The company is now operating in compliance and doing so will reduce the amount of stormwater discharges which can include copper and arsenic. The discharge flows to the Payette River which is an anadromous fish passage waterway. The company agreed to pay a penalty of \$60,000. Contact: Alex Fidis, 206-553-4710; Chae Park, 206-553-1441.

**Region 10 Issues FIFRA Stop Sale, Use, or Removal Order to Holmes ENVIRO, d/b/a Holmes ENVIRO, LLC, Philomath, OR**

On March 3, 2017, EPA issued a Stop Sale, Use, or Removal Order (SSURO) to Holmes ENVIRO, d/b/a Holmes ENVIRO, LLC (Philomath, Oregon) to prevent the distribution and sale of the products, “Enhand,” “Stealth,” and “PGPR Guard.” These products are unregistered pesticides because the product labels contain pesticidal claims yet the products are not registered with EPA under FIFRA Section 3. EPA uses a stop sale order to prevent the sale, distribution, or use of unregistered pesticides or pesticides with incorrect or inadequate labels to prevent harm to the public and the environment from unsafe chemicals or products. Contact: Danielle Meinhardt, 206-553-4858; Chad Schulze, 206-553-0505.

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